TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 360.

SAMUEL H. STONE, AUDITOR; CHARLES FINLEY, SECRETARY OF STATE, AND GEORGE W. LONG, TREASURER OF THE COMMONWEALTH OF KENTUCKY, AND CITY OF LOUISVILLE, APPELLANTS,

vs.

THE LOUISVILLE BANKING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED AUGUST 15, 1895.

(16,945.)

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at its regular term begun and held at the Federal court hall, in the city of Louisville, on February 21, 1898.

Present: Hon. John M. Harlan, circuit justice; Honorables W. H. Taft and H. H. Lurton, circuit judges.

LOUISVILLE BANKING COMPANY, Complainant,
versus
S. H. STONE, ETC., Defendants. } 6583.

Be it remembered that heretofore, to wit, on April 17, 1897, came the complainant, Louisville Trust Company, by its counsel, Helm & Bruce, and filed in the clerk's office of our said court *their* bill of complaint and exhibits against the above-named defendants, S. H. Stone, etc., which bill of complaint is in the words and figures as follows, to wit:

To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

Louisville Banking Company, a citizen and resident of the State of Kentucky, brings this bill against Samuel H. Stone, Charles Finley and G. W. Long, citizens and residents of the State of Kentucky, and the City of Louisville, a municipal corporation of said State of Kentucky; and thereupon your orator complains and says that it is a corporation duly chartered and organized under the laws of the Commonwealth of Kentucky by an act of the General Assembly of said Commonwealth, entitled "An act to incorporate the Louisville Insurance and Banking Company," approved on the 24th day — January, 1867; and your orator has all the powers granted by said charter and the several amendments thereof, among which is the power to contract, and to sue and be sued. Said amendments
2 were adopted, March 11, 1867, March 21, 1870, and March 20, 1872. By this last amendment the corporate name was changed from Louisville Insurance and Banking Company to "Louisville Banking Company." Other amendments were adopted March 1, 1876, February 4, 1880, April 22, 1884, and April 21, 1882.

Your orator says it is and has been since its organization engaged in the banking business in the city of Louisville, Kentucky. The defendant Samuel H. Stone is the auditor of public accounts for the Commonwealth of Kentucky, the defendant Charles Finley is the secretary of state, and the defendant George W. Long is the treasurer of the State, all of them having been duly elected to their respective offices, and having qualified as provided by law.

The defendant The City of Louisville is a municipal corporation deriving all its rights and powers from a statute law of Kentucky duly passed for the government of cities of the first class.

Par. 2. Your orator shows that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said

Commonwealth governing the taxation of banks was very unsatisfactory in this: to wit, that there were four banks chartered by said State prior to the year 1856, which held charter contracts beyond the power of the State to repeal. Said banks are hereafter referred to as the old banks. These banks had a large capital and divers branches, and came into immediate and direct competition with the other banks of the State. The court of appeals of Kentucky, the court of final resort in that State, had several times construed said contracts and held that they were beyond the power of legislature to repeal. By their said contracts with the State each of these banks could discharge itself of all taxation—State and local, such as county, city and district—by the payment of fifty cents on each share of its stock of the par value of $100, and this payment of fifty cents on each share of stock the Commonwealth was by its contract bound to receive in full payment of its claim for taxation upon all the different kinds of property of said bank.

In addition to this complication with the old banks, the national banks in the State were claiming the right to be put upon a footing as to taxation upon an equality with the four old banks, and as the capital of the four old banks was about equal to the combined capital of all the other State banks, the courts of Kentucky had held that they could not be subjected to a heavier burden of taxation.

No other bank in the State could be taxed at a materially higher rate without practically driving it out of business, as it would thereby be unable to compete with the said four old banks and the national banks, and for this reason by express provisions of the respect-
3 ive charters granted by the State, as by the general law, all the banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks. The State being dissatisfied with the existing tax rate against the banks and similar corporations desired to increase the rate, but much desired, for the reason above referred to, to have the tax rate on all the banks in the State uniform, which could only be done by exempting them from local taxation and increasing their tax to the State. And as it was not within the power of the State to increase the tax rate against the old banks except with their consent, they were asked in the interest of uniformity to consent, and, in the interest of uniformity and to secure to the banking interests in the State repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner hereafter described to the scheme of taxation hereafter more particularly described. Accordingly the General Assembly of the Commonwealth of Kentucky, as a part of its revenue bill, entitled, "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, enacted provisions concerning the taxation of banks substantially as follows:

1st. It declared that the shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred

dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations, shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county and municipal. For the purpose of ascertaining such surplus, undivided profits, or undivided accumulations, it is provided that the auditor might at his option investigate the books of the bank, institution or corporation. And it is further provided that any officer having in charge the affairs of such bank, institution, or corporation who shall refuse, when duly called upon, for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court, or the circuit court of the county wherein said bank, institution or corporation shall be located, and, upon conviction, shall be fined not less than five hundred dollars and not more than one thousand dollars.

It is further provided that the cashier of the bank, and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, and the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations are invested, and pay into the treasury the amount of tax due.

4 It is further provided that if such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and any State bank, institution, or corporation shall thereby forfeit the privilege of its charter.

The fourth section of said act is as follows:

"That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth, and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever so long as said tax shall be paid during the corporate existence of such bank."

By the fifth section it is declared that said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly; provided, they pay the tax provided in section 1 from the passage of this act. Said act also provides in effect that said banks accepting the provisions of said bill shall pay taxes for municipal and county purposes on any real

estate or building owned and used by said banks or corporations for conducting their business.

Your orator further shows that thereafter within the time allowed by said act, to wit, during the year 1887, and before the meeting of the next General Assembly, it caused the question of the acceptance or non-acceptance of the State's proposition to be submitted to a quorum of its stockholders duly assembled for the purpose of considering said question; and after due consideration its stockholders, representing more than a majority of all its stock outstanding, consented to the levying of said tax, and agreed to pay the same as in the said law provided, and to waive and release all its rights under its charter to a different mode or a smaller rate of taxation, and said consent and agreement to and with the State of Kentucky was evidenced by writing under the corporate seal of your orator, which was delivered to the governor of the Commonwealth, and from that time thenceforward continuously to the present time your orator regularly and promptly paid its taxes each year in accordance with and as provided by its said contract, except as hereinafter explained.

Your orator through its cashier made its report in accordance with said law, and paid into the State treasury on the first day of July, 1887—the said law not having gone into effect until September 14, 1886—the full tax required by said act, and in conformity with said act has made its report in proper form to the auditor of public accounts on the first day of July in each and every year up to this time.

Your orator shows that in July, 1893 and 1894, it made its report as usual to the auditor of public accounts in the manner prescribed by the act of May 17, 1886, known as the "Hewitt bill," and tendered the amount of the tax due thereunder, to wit, seventy-five cents on each share of its capital stock equal to one hundred dollars, and also in accordance with said act tendered to said auditor the taxes at the current rate, then assessed upon real estate, upon so much of its surplus, undivided surplus, undivided profits or accumulations as exceeded an amount equal to ten per cent. on its capital stock, but said auditor refused to accept the money so tendered, or to receive any more than the current rate of forty-two and one-half cents on the hundred dollars on the valuation fixed by the State board of valuation and assessment provided for in the act of November 11, 1892, hereafter more particularly set out. The amount so demanded by the auditor your orator paid under protest.

Afterwards on the 1st day of June, 1895, the court of appeals of Kentucky decided in favor of the banks the litigation hereinafter mentioned, and thereafter the auditor of the State demanded from your orator and each of the other banks in the State, for the years 1893 and 1894 the difference between what had been paid under the act of November 11, 1892, and what should have been paid under the act of May 17, 1886, known as the "Hewitt bill;" and your orator promptly complied with said demand and paid said difference into the treasury of the State, and for the years 1895 and 1896 your orator made report and payment under the "Hewitt bill" and in

accordance with its provisions; and so it is that your orator respectfully shows that it has regularly since and including 1887, and up to the present time, reported to the auditor in the manner provided by said act of May 17, 1886, and has regularly, and within the prescribed time paid its taxes thereunder, except, and for the causes mentioned, during the period above described. Your orator shows that it does not and never did own the building in which it does or ever did business.

Your orator respectfully shows and submits to this honorable court that the act hereinbefore specifically set out, adopted by the General Assembly of Kentucky on the 17th of May. 1886, and your orator's formal acceptance thereunder as provided by said statute, and your orator's payment thereunder and in accordance therewith to the State of a sum much in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and your orator and its stockholders upon the other part, continuing during the legal existence of your orator's corporate life, and the State was equally with your orator bound thereby, and had no right to retire therefrom.

6 Par. 3. Your orator respectfully shows that notwithstanding the contract thus formally entered into, and which it wasagreed should subsist during the charter life of your orator, the State of Kentucky on the 11th of November, 1892, unmindful of its contract obligations with your orator and others, through its General Assembly undertook to tax all of the banks in the State in a manner different from that prescribed in the contract hereinbefore set out, and also to subject them to all manner of local taxation, the total tax for State and municipal purposes thus provided for being very much more onerous than the tax provided for under the "Hewitt bill" approved May 17, 1886. As applied to your orator the tax under the act of November 11, 1892, before referred to will exceed the tax which it would have to pay under the "Hewitt bill" by $10,000.00. The particular method of assessment and taxation prescribed in the act of November 11, 1892, and now attempted to be enforced, will be hereafter more at length set out.

Par. 4. Your orator shows that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demanded of your orator and of every other bank and trust company in the city of Louisville, a tax equal to four per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville in behalf of the city against all of said banks and trust companies, including your orator. At that date the tax upon the gross receipts of the banks, if enforceable, was payable to the sinking fund of the city of Louisville, and with a view of embarrassing the sinking fund of the city as little as possible, the banks, through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one

part and the banks and trust companies of the city of Louisville, including your orator, upon the other, that pending the litigation which by the agreement was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

First. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the "Hewitt bill." This sum it was provided should be an actual payment and not be repaid under any circumstances, but its payment was not in any manner, or to any extent to prejudice the banks or trust companies paying it, or be taken as a waiver of any legal right which they might have in the premises.

7 Second. In addition to making the above payments the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum which added to said payment would equal four per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee, required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

Third. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to four per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

Fourth. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay, and diligently prosecute such actions as might be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them or any of them for doing business without license.

The substance of this agreement was spread at large upon the records of the sinking fund, and a copy thereof is filed herewith as part hereof, marked A.

As further *evidence* of the contract at that time made between the City of Louisville and its sinking fund, and the various banks and trust companies, including your orator of the city, it was agreed in writing by said parties in substance that in order to effectually test the question as to all of said banks and trust companies they were divided into three classes, it being understood that all who accepted the provisions of the said "Hewitt bill" would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.
B. Banks whose charters had been granted subsequent to 1856.
C. National banks.

It was understood that the trust and title companies which had accepted the provisions of the "Hewitt bill" would fall in class B above named.

It was further agreed that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the "Hewitt bill," that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing the contract and the
8 validity thereof under the "Hewitt bill" that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the "Hewitt bill."

This agreement was signed by the president of the sinking fund, and by the attorney for the city under the authority and direction of the mayor and the board of sinking fund commissioners, and by the counsel who represented the banks in said litigation.

On the faith of this agreement as outlined in the resolution spread upon the records of the sinking fund, and more at large set out in the contract duly executed, the various banks and trust companies (including your orator) of the city of Louisville paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners heretofore referred to; and at a still later date, and in further reliance upon said agreement, the said banks and companies, including your orator, except those already involved in the test cases, paid the whole amount of the taxes claimed against them by the city of Louisville without reservation, until the question should be finally disposed of. This was done without prejudice to the rights of the banks and trust companies, and was not to be deemed a waiver by the banks or trust companies of any of their claimed rights, but was done to prevent confusion from coming into the management of the sinking fund, as the taxes against the banks claimed by the city had been transferred to the sinking fund of said city. It was agreed that these payments should not last longer than the final decision in favor of the banks if such decision should be rendered.

A copy of the contract aforesaid with the minute aforesaid is filed herewith as part hereof, marked A.

The amount paid by the banks and trust companies to the city under said agreement is over $150,000, no part of which has ever been refunded by said city.

Par. 5. Your orator further shows that with a view of testing every phase of the question so that the decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to the contract aforesaid. The Bank of Kentucky, whose charter was granted prior to 1856, during which year a general law was adopted reserv-

ing the right to amend or repeal all charters or amendments thereafter granted unless a contrary intent was plainly expressed, brought suit in which it represented itself and the Bank of Louisville, which also had a charter granted prior to 1856. The Louisville Banking Company had a charter from the State granted subsequent to the year 1856, but before the passage of the "Hewitt bill," and it brought a suit in which it represented all the banks and trust companies in the city whose charters were granted by the State since 1856; and the Third national bank also brought its suit, in which it represented all the national banks of the city.

9 In these suits each of the banks set up the adoption of the "Hewitt bill" with its various provisions, and the fact that each of them had assembled their stockholders to consider the question whether or not it would accept the provisions of the "Hewitt bill," and the further fact that the said stockholders, a majority of all of them acting in the affirmative, had accepted the provisions of the "Hewitt bill," and had certified the same to the governor, and had thereafter regularly made the reports and payments as provided for in the "Hewitt bill," and it was asserted in each case that the act of May 17, 1886, known as the "Hewitt bill," together with the action of each bank thereon accepting the same, constituted a valid and irrepealable contract, lasting during the charter life of each bank, and that the action of the State in undertaking to subsequently tax the banks by a different method and in a more onerous way, was in violation of the Federal Constitution, which forbids a State from passing a law impairing the obligation of a contract. Such proceedings were had that the Jefferson circuit court adjudged that the Bank of Kentucky had a contract in the "Hewitt bill" which was irrepealable, but that the Louisville Banking Company and the Third national bank did not have, and the petitions of these two banks were each dismissed. From the judgment of the Jefferson circuit court the city of Louisville prosecuted its appeal against the Bank of Kentucky; and the Louisville Banking Company and the Third national bank each prosecuted its appeal against the city of Louisville. These suits, though really against the city of Louisville, were each brought against R. H. Thompson, judge of the police court of the city of Louisville, that being the method pointed out by the law governing cities of the first class, as a means of testing the validity of any city ordinance.

In the court of appeals, which is the court of final resort in the State of Kentucky, the city of Louisville was represented by its corporation counsel and the Commonwealth of Kentucky appeared by its attorney general and by oral argument and printed brief opposed the contention of the several banks. The city and the State through their respective official attorneys both insisted that none of the banks or trust companies had any contract under the "Hewitt bill," and that if they did have at one time, the State had a perfect right to retire from it under the sixth section of the article relating to banks, which declared that this "act shall be subject to the provisions of section 8, chapter 68, of the General Statutes."

The only questions which were submitted to the circuit court and the court of appeals, were—

1st. Whether or not the "Hewitt bill," coupled with the acceptance thereof by the several banks and trust companies, and the payment of taxes thereunder, constituted a contract between the State and the several banks and trust companies.

10 2d. If it did, then what was the extent of the duration of that contract.

It was contended by the banks and trust companies, first, that they did have a contract growing out of the acceptance of the "Hewitt bill," and second, that the contract was irrepealable by the State and lasted throughout the corporate existence of the several banks and trust companies. These being the only questions involved, the court of appeals of Kentucky after a most elaborate argument, and the most thorough and painstaking consideration, determined and adjudged in accordance with the contention of the several banks and trust companies—

First. That the "Hewitt bill" and the acceptance thereof and the action thereunder by the banks did constitute a contract between the banks and the State, and,

Second. That this contract was irrepealable in its nature and lasted throughout the charter existence of the several banks and trust companies.

A complete transcript of the record in the case of the Louisville Banking Company vs. R. H. Thompson, Judge of the Police Court of the City of Louisville, is filed herewith and made a part hereof.

Upon the issuing of said mandate in the cases of the Louisville Banking Company and Third national bank judgments were entered in the Jefferson circuit court, in pursuance to said mandate and the respective prayers of said petitions.

Certified copies of said orders are also filed with the transcript of the records in the cases above named. Wherefore your orator pleads and relies upon said former adjudication as a bar to any further claim by or on behalf of the city of Louisville against your orator for taxes except under and in accordance with said act of May 17, 1886, known as the "Hewitt bill."

Par. 6. Your orator further shows that by an act passed by the General Assembly of the Commonwealth of Kentucky on the 11th of November, 1892, it is provided in substance that every incorporated bank and trust company shall in addition to other taxes, imposed on it by law, annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised. The auditor, treasurer and secretary of state is by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is further provided that in order to determine the value of the franchise the banks and trust companies shall each file reports on or before the first day of March in each year, which reports shall be made up and include the 31st day of the preceding December. These reports it is provided shall be verified by the president, cashier, secretary, treasurer or manager or other chief officer, in such form as the auditor may prescribe

showing the following facts, viz: The name and principal place of business of the company; the amount of capital stock; the
11 number of shares; the amount of stock paid up; the nominal and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement was required to be made; the amount of surplus funds, and undivided profits, and the value of all other assets; the total amount of indebtedness as principal; the amount of gross or net earnings or income, including interest on investments, the income from all other sources for twelve months next preceding the 15th day of September of the year in which the statement is required; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof, estimated at the price it will bring at a fair voluntary sale; and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized to fix the value, for purposes of taxation, upon the franchise of such banks and trust companies. It is further provided that the auditor of the State at the expiration of thirty days after the final determination of such values shall certify to the county clerk of the counties when any portion of the corporate franchise of such banks and trust companies shall be liable to local taxation, the amount thereof liable for county, city, town or district tax, and such certificate, it is provided, should by each county clerk be filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

It is further provided that as to banks and trust companies their taxes assessed by the State board of valuation and assessments, as before described, shall be due and payable on the 1st of July succeeding such report.

It is further provided that in the event the banks and trust companies failed to make such report and pay such taxes, a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum, and any bank or trust company failing to pay its taxes, penalties and interest after becoming delinquent, shall be deemed guilty of a misdemeanor, and on conviction shall be fined $50.00 for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin circuit court shall have jurisdiction.

Your orator further respectfully submits to the court that this scheme of taxation contained in the act of November 11, 1892, above described, impairs the obligation of its contract, and is for that reason in violation of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract. And your orator further submits that said scheme of taxation is also in violation of the 181st section of the constitution of the State of Kentucky, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town or
12 other municipal corporation, but may, by general laws, confer

on the proper authorities thereof, respectively, the power to assess and collect such taxes."

Your orator respectfully shows that the tax which the City of Louisville claims the right to collect, and is threatening to collect from your orator has not been assessed by the said City of Louisville, but the assessment is required by the law to be made by the board of valuation and assessment, consisting of the defendants Stone, Finley and Long, acting in their capacities, respectively, as auditor, secretary and treasurer of the State.

Your orator says that this board thus constituted, will, unless, restrained by this honorable court, proceed to assess your orator in the manner pointed out by the act of November 11, 1892, when it has no lawful right to do so, and it will thereby cast a cloud upon your orator's right to pay taxes under and in accordance with its contract, and the said auditor will, unless restrained, certify said assessment to the county clerk of Jefferson county, who will in turn certify the same to the tax collector of the city of Louisville, and said city will attempt by distraint and otherwise to collect from your orator a tax in favor of said city upon said assessment, and thus your orator will be subjected to harassment and litigation.

And furthermore, your orator says that if said assessment be not restrained and is allowed to be made, the State of Kentucky will claim that unless your orator pays the taxes according to the said legal scheme for taxation devised by the State, that your orator is subject to a penalty of ten per cent., and that the taxes thereafter should carry ten per cent. per annum interest; and furthermore that your orator would be liable to a penalty of $50 a day for each day that the taxes, according to the said illegal scheme, remains unpaid. The result will be that unless restrained your orator will be improperly annoyed by distraint upon its personal property and harassed with litigation, and the value of its stock will be greatly impaired, and its stockholders injured by the suits instituted by the city and State in their attempt respectively to enforce as against your orator the taxes attempted to be imposed and penalties denounced, by the statute.

Your orator shows that the State taxes based on the assessment of your orator's franchise exceeds the sum of $2,000.00, exclusive of interest and cost, and the taxes claimed by the City of Louisville based on the assessment of your orator's franchise exceeds the sum of $2,000.00, exclusive of interest and cost.

Your orator respectfully shows that the City of Louisville is insisting that the auditor of the State, the defendant Samuel H. Stone, shall certify to the county clerk of Jefferson county the assessment illegally made, or to be made by the board of valuation and assessment, so that its tax collector may endeavor to enforce as against your orator and the other banks and trust companies in the city the taxes for city purposes, and your orator further shows that
13 the said auditor of the State, Samuel H. Stone, has threatened to so certify said assessment, and will unless restrained, certify said assessment for the various years 1895, 1896 and 1897 to the

county clerk of Jefferson county, and said clerk will certify the said assessment to the tax collector of the city of Louisville.

To the end therefore that your orator may not be subjected to the false claims and suits which will be instituted by the city and State, and that it may be spared the irreparable injury which it will suffer, and that its property and its right of contract heretofore fully stated shall not be subjected to an illegal cloud, your orator prays for a writ of subpœna against the defendants, Samuel H. Stone, auditor, Charles Finley, secretary, George W. Long, treasurer of the State of Kentucky, and The City of Louisville, to appear and make full and true answer to this bill (but not under oath, answer under oath being hereby waived), and that an injunction *pendente lite* be granted commanding the said Samuel H. Stone, Charles Finley and George W. Long to refrain from assessing or attempting to assess the franchise of your orator, or any of the property of your orator, and that the said Samuel H. Stone, be restrained from certifying any assessment which has been or may be made of the franchise or property of your orator to the county clerk of Jefferson county, or any other officer, and that the defendants, including The City of Louisville, and each of them, be restrained from collecting or attempting to collect any taxes based upon said illegal assessment, whether due to the State of Kentucky or to the City of Louisville, until the final order and determination of this court, and that upon such final hearing a decree be made establishing the contract right of your orator to be taxed in the method prescribed by the act of May 17, 1886, known as the "Hewitt bill," and not otherwise, and perpetually enjoining the defendants from assessing or certifying any assessment made of your orator's franchise or properties, and from collecting any of said taxes or claimed penalties in behalf of either the city or State; and for all general and equitable relief to which your orator may be entitled.

HELM & BRUCE,
Solicitors for Complainant.

Theodore Harris says he is the president of complainant, and that the statements contained in the foregoing bill are true.

THEODORE HARRIS.

Subscribed and sworn to before me by Theodore Harris this 17th day of April, 1897.

ARTHUR PETER,
Notary Public for Jefferson County, Kentucky.

My commission expires January 15, 1898.

14 Here follows "Exhibit A," referred to in foregoing bill:

SINKING FUND OFFICE, *February* 13, 1894.

A committee, consisting of Messrs. Thomas L. Barrett, John H. Leathers and George W. Swearingen, appeared before the board on behalf of the banks, who are members of the Louisville clearing-house, and stated that it was the purpose of said banks to resist

the payment of the license fee demanded of them under the license ordinance approved January 29, 1894, on the ground that said banks were not legally liable to pay the same, but in order to save the sinking fund from any embarrassment occasioned by their refusal to pay said license fee, the banks, with two or three exceptions, were willing to enter into an arrangement whereby they would pay a part of the amount demanded of them, and lend the sinking fund the balance thereof, to be repaid with interest at four per centum per annum, if it was finally decided and adjudged that the banks were not liable to pay said license fees.

After discussion, the president was, on motion of Mr. Tyler, seconded by Mr. Summers, authorized to enter into the following arrangement with the different banks, trust, and title companies, who will be subject to the payment of the license fees if the license ordinance is finally adjudged to be valid and enforceable:

First. To accept from each of said banks and companies a payment equal to the difference between the amount they now pay to the State for State taxes and the amount they would be required to pay for State taxes under the provisions of what is known as the "Hewitt bill." This sum shall be an actual payment, not to be repaid under any circumstances, but its payment shall not in any manner, or to any extent, prejudice the banks or companies paying it, or be taken as a waiver of any legal right which they have in the premises.

Second. In addition to making above payments the said banks and companies, save those selected to test the question involved, shall each lend the sinking fund a sum which added to said payment, will equal four per centum of its gross earnings during the year 1893, and the sinking fund will execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it shall be finally adjudged by the court of last resort that said banks or companies are not liable to pay the license fee required by the ordinance aforesaid, but if it is finally adjudged that they are liable to pay said license fee, then the said loan shall be taken and deemed as a payment of said license fee and the obligation to repay the same shall be void.

Third. The banks or companies selected to test the questions involved will each lend the sinking fund a sum equal to four per centum of their gross earnings for the year 1893, and will receive therefor the obligations of the sinking fund as above described.

15 Fourth. This arrangement is to be entered into with the understanding that the said banks and companies will institute without delay and diligently prosecute such actions as may be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund will not prosecute them or any of them for doing business without license.

A true copy.

Attest:

J. M. TERRY,
Secretary and Treasurer.

Stipulation between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, and the banks, trust, and title companies of the city of Louisville.

It is agreed between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, represented by H. S. Barker, city attorney, acting under the advice and by the authority of the board of sinking fund commissioners, given at a regular meeting of said board, and the mayor of the city of Louisville, on the one part, and the various banks, trust and title companies of the city of Louisville, acting by Humphrey & Davie and Helm & Bruce, their attorneys, of the other part—

First. That in February, 1894, it was agreed between the city of Louisville and the board of sinking fund commissioners, acting together in the interest of the said city, and the various banks, trust and title companies, acting through their committee, to wit, Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, and their counsel, to wit, Messrs. Humphrey & Davie and Helm & Bruce, that the question of the liability of said banks and trust and title companies to pay municipal taxes, either license or *ad valorem*, otherwise than as provided by the revenue law, commonly known as the Hewitt bill, should be tested by appropriate litigation looking to that end.

Second. In order to effectually test the question as to all of said companies they were divided into three classes, it being understood that all who had accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It being understood that the trust and title companies which had accepted the provisions of the Hewitt bill would fall in class B, above named.

Third. In pursuance of that agreement the sinking fund commissioners caused to be issued warrants against the Bank of Kentucky, representing class A, the Louisville Banking Company representing class B, and the Third national bank representing class C, and these banks respectively applied for writ of prohibition against the city court of Louisville proceeding with the hearing, that being the manner pointed out by the city charter for testing the validity of city ordinances.

16 It was distinctly understood and agreed at that time, and this agreement was made for the best interest of all parties to it, that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing a contract and the validity thereof under the Hewitt bill, that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the Hewitt bill.

Fourth. On the faith of this agreement all of the banks and companies aforesaid paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners of February 13, 1894, an attested copy of which is hereto attached as part hereof, but at a later date and in further reliance upon said agreement all said banks and companies, except those actually involved in the test cases, paid the whole of the amount of taxes claimed as against them by the city of Louisville without reservation until the question thus raised should be finally disposed of.

HUMPHREY & DAVIE,
HELM & BRUCE,
For the Banks, Trust, and Title Companies of the City of Louisville.
H. S. BARKER, *City Attorney.*

Approved:
C. H. GIBSON,
Pres't Com'rs Sinking Fund City of Louisville.

A true copy.
Attest: HUSTON QUIN.
ARTHUR PETER.
M. McLOUGHLIN.

COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the Kentucky court of appeals, at the capitol, in the city of Frankfort, on the first day of June, A. D. 1896.

Chief Justice W. S. Pryor, Judges Joseph H. Lewis, James H. Hazelrigg, John R. Grace, Thomas H. Paynter, B. L. D. Guffy, and George B. Eastin, sitting.

LOUISVILLE BANKING COMPANY, Appellant,
versus
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.

Be it remembered that heretofore, to wit, on the 24th day of August, 1894, the appellants by their counsel filed in the
17 office of the clerk of the court of appeals a transcript of a record in words and figures following, to wit:

STATE OF KENTUCKY,
Jefferson County.

Pleas before the Honorable Sterling B. Toney, judge of the Jefferson circuit court, law and equity division, and Honorable Emmet Field, judge of the Jefferson circuit court, common pleas division, at the court-house, in Louisville, Ky., on dates hereinafter mentioned.

Be it known that heretofore, to wit, on the 4th day of May, 1894,

came plaintiffs, by Helm & Bruce, &c., attorneys, and filed its petition in the office of the clerk of the aforesaid court.

Said petition is as follows, to wit:

Jefferson Circuit Court, Law and Equity Division.

LOUISVILLE BANKING COMPANY, Plaintiff,
versus
R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Defendant. } No. 4340. Petition.

The plaintiff, The Louisville Banking Company, states that it is a corporation duly created by and existing under the laws of the State of Kentucky. It was originally incorporated by an act approved March 11, 1867, under the name of the Louisville Insurance and Banking Company, such act being entitled "An act to incorporate the Louisville Insurance and Banking Company." Its said charter has been amended from time to time by acts approved, respectively, March 21, 1870; March 20, 1872; March 1, 1876; February 4, 1880; April 22, 1884; April 21, 1892.

Under and by virtue of the said amendments its name has been changed to the Louisville Banking Company. By the terms of said act and amendments it was created a banking corporation, and there was conferred upon it the powers usual to such corporations, and it was to continue a body politic and corporate until January 1, 1899.

By the 15th section of said act, approved March 11, 1867, it was provided as follows:

"It shall be the duty of the president, on the 1st day of January of each year, to pay into the treasury fifty cents on each one hundred dollars of stock held and paid for in such institution; which shall be in full of all tax or bonus, and be a part of the sinking fund of this Commonwealth."

Plaintiff states that as aforesaid, this bank was promptly organized under and in accordance with its charter, and has ever since continued in existence until this time under said charter and the aforesaid amendments, exercising the powers, franchises and privileges therein conferred, and performing all the obligations therein imposed.

18 It has, on the 1st day of July, in every year from its incorporation, paid into the State treasury the tax of fifty cents on each share of its stock, as required by the charter, up to the year 1886. The plaintiff states that during most if not the whole of said time the said rate of taxation was very much higher upon the said bank than was imposed by the State upon other persons or corporations.

By an act approved May 17, 1886, entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," it was provided that the cashier of all State and national banks should annually, on the 1st day of July of each year, make report of their condition to the auditor, and should pay into the State treasury seventy-five

cents on each share of its capital stock, and should in addition pay into the said treasury, on its surplus, undivided profits and accumulations in excess of ten per centum of its capital stock, a tax at the same rate as the real property should be assessed; and it was distinctly provided by said act that the said taxation should be in full of all tax, State, county and municipal, except that the real estate or building owned and used by the banks in conducting their business should not be exempted from taxation for county or municipal purposes, but that such real estate alone might be taxed for county or municipal purposes, as other real estate is taxed. As a condition to its operation upon any of the banks referred to therein, said act, in the fourth section thereof, provided as follows:

"SECTION 4. That each of said banks, institutions and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided; and to waive and release all right under the act of Congress or under the charters of the State banks to a different mode or a smaller rate of taxation; which consent and agreement to and with the State of Kentucky, shall be evidenced by writing under the seal of said bank, and delivered to the governor of the Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax should be paid during the corporate existence of the bank."

The consent provided for by this act, and the notice to the governor, were further required to be given before the meeting of the next General Assembly, provided the tax should be paid by the bank from the passage of the act.

At a meeting of the stockholders of the plaintiff bank held on the — day of ——, a quorum of the stockholders and a majority thereof being present, such stockholders, and a majority in interest thereof, did give their consent to the levying of said tax and to the waiver and release of all right under its charter, to a different mode and a smaller rate of taxation; and said consent of the bank to the waiver and release aforesaid, and the said agreement, were certified in writing under the seal of the bank by the proper corporate authority, to the governor of the Commonwealth and delivered to him before the next meeting of the General Assembly after the passage of said act.

19

The plaintiff, also, through its cashier, made its report and paid into the State treasury on the 1st day of July, 1886, the full tax required by said act; and in conformity with said act has made its reports in proper form to the auditor of public accounts, on the 1st day of July, in each and every year up to this time, and has until the year 1893 paid to the State treasury, on each 1st day of July in every year from 1886, the full tax required by said act, being seventy-five cents on each share of its capital stock, and a tax at the same rate as real property was assessed by the State, upon its surplus, undivided profits and accumulations in excess of

ten per centum of its capital stock. It was only prevented from paying the whole of said tax on the 1st day of July, 1893, by the refusal of the auditor, the fiscal agent of the State, to receive the same.

The plaintiff has not, at any time, owned any real estate or buildings in which it conducted its business.

On the 1st day of July, 1893, the plaintiff's cashier did, as he had regularly done for years before, make a written report to the auditor of public accounts, verified by his oath required by law, of the true amount of the capital of the bank and of its surplus, undivided profits and accumulations, and did then and there tender and offer to pay into the treasury of the State the sum of $6,744.74, the full amount of the tax required and due under the aforesaid act to amend the revenue laws, approved May 17, 1886. Said tender was refused and rejected by the said auditor of public accounts, under the claim made by him that the tax provisions of the plaintiff's charter and the said act to amend the revenue laws, approved May 17, 1886, had been superseded and repealed by the new constitution of the State of Kentucky, which went into operation on the 28th day of September, 1891, and by the act of the legislature entitled "An act relating to revenue and taxation," which went into effect on November 11, 1892.

The said auditor, as the agent of the State, refused and declined to accept any other sum than the sum of $5,382.46, the amount claimed by him to be due to the State on the franchise of said bank, under the provisions of said act of November 11, 1892. The plaintiff, protesting against said act as illegal in its application to the plaintiff, acceeded to said auditor's demand, and under protest as aforesaid, paid into the State treasury the last-named sum.

The plaintiff further states that by an act entitled, "An act for the government of cities of the first class," approved July 1, 1893, and which is applicable to the city of Louisville, it is provided, among other things, that the general council may, by ordi-
20 nance, provide for the following licenses to be paid into the sinking fund, with adequate penalties for doing business, or following a calling, occupation, profession, or using, or holding, or exhibiting the articles therein named, without the required license, viz: for each bank, trust and title company, the license tax shall not be less than four nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city.

In pursuance of the said charter as aforesaid, the general council of the city of Louisville did pass an ordinance which was approved January 29, 1894, by which it was provided, among other things, that hereafter the following licenses should be paid into the sinking fund of the city of Louisville, viz: each bank and trust company shall pay an annual license tax of four per cent. of the gross earnings, exclusive of rent from real estate paying taxes in the city of Louisville.

Plaintiff states that the said act granting a charter to cities of the first class, and the said ordinance passed in pursuance thereof, are both unconstitutional and void in that they impair the obligation

of the contract between the plaintiff and the Commonwealth of Kentucky as embodied in its charter as aforesaid, and as embodied in its agreement as aforesaid, made under the said revenue law of May 17, 1886; and are a violation of the Constitution of the United States, and especially the section thereof providing that no State can pass any law impairing the obligation of a contract.

The plaintiff avers and submits that the said act chartering cities of the first class, and the said ordinance as aforesaid, are both unconstitutional and void, as above set forth; that the granting and acceptance of its charter and the several acts amending the same which were accepted and acted upon by the said bank, constituted a contract between the State on the one part and the bank and its stockholders on the other part, continuing during the legal existence of the corporation; and the State never had and has not now the right to repeal or annul said agreement, or the rights conferred by said charter limiting the right of the State to impose a tax on said bank without the consent of said bank.

Plaintiff further states that it did give its consent to the act of May 17, 1886, and did, under the considerations therein recited, waive and release its rights under its charter to a different mode or a smaller rate of taxation than is therein provided. Such consent and waiver were made on the belief that the said act was intended to put in operation a permanent legislative policy governing the taxation of all banks then existing which would accept its provisions, to endure at least during the corporate existence of all said existing banks. Plaintiff submits that such is the true construction of said act, and that the said act and its acceptance constituted a contract which the State cannot annul or repeal, and which is binding on the State in all its departments.

21 Plaintiff states that it was provided in said ordinance that all licenses should be paid in advance, and in every case where it is based upon a per centum of the earnings or income of the corporation, the computation shall be made upon the earnings or income of such corporation for the year immediately preceding the time the license is to be dated or is payable; and the corporation to whom the license shall be granted shall at the end of the year pay the amount due for the excess over the estimates made at the time of issuing the license, under the same penalty as if it had failed or refused to procure a license.

And it is further provided that any corporation violating any of the provisions of said ordinance shall be fined not less than five dollars nor more than one hundred dollars for each offense; each day that the violation is continued to constitute a separate offense.

The plaintiff states that notwithstanding the premises as aforesaid, the commissioners of the sinking fund of the city of Louisville have demanded of this plaintiff that it shall pay to them the sum of $5,938.78 and upon its failure so to pay have caused a warrant to be issued out of the police court of the city of Louisville, wherein this plaintiff is charged with the offense of conducting a bank without a license, and unless prohibited by this honorable court, the defendant, R. H. Thompson, who is judge of the police

court of the city of Louisville, will cause this plaintiff to be tried under the said warrant, and will cause this plaintiff to be fined for failing to comply with said ordinance and not producing a license to do business in accordance therewith. Plaintiff further states that as aforesaid the said ordinance is null and void and of no effect; and the said R. H. Thompson, judge of the police court of the city of Louisville, has no rightful power or authority to enforce the same or cause this plaintiff to be tried upon the said warrant.

Wherefore the plaintiff prays that this court by a writ of prohibition or order addressed to the police court of the city of Louisville prohibit it from proceeding in the matter of the warrant sued out in said court against plaintiff for failing to pay said license fee, and that on final hearing it be adjudged that said license ordinance and said act for the government of cities of the first class in so far as they authorize a tax in any form to be levied against and collected from the plaintiff be declared unconstitutional and void, and for all general and proper relief.

HUMPHREY & DAVIE,
HELM & BRUCE,
For Plaintiff.

Theo. Harris says he is the president of the Louisville Banking Company and he believes the statements contained in the foregoing petition are true.

THEODORE HARRIS.

22 Subscribed and sworn to before me by Theodore Harris this 4th day of May, 1894. My commission expires January 15, 1898.

ARTHUR PETER,
Notary Public, Jefferson County, Ky.

And thereupon the clerk issued summons and copy which is as follows:

Jefferson Circuit Court.

The Commonwealth of Kentucky to the sheriff of Jefferson county, Greeting:

We command you to summon R. H. Thompson, judge of the police court of the city of Louisville, to answer a petition filed against him in our Jefferson circuit court, by Louisville Banking Company and warn him that upon failure so to do for twenty days after service hereof, if in Jefferson county, or for thirty days if elsewhere in the State, judgment may be rendered by default, or answer compelled, or proof taken at petitioner's option, and make due return hereof within sixty days from date hereof.

Witness John S. Cain, clerk of said court, this 4th day of May, 1894.

JOHN S. CAIN, *Clerk*,
By E. WHITEHEAD, *D. C.*

The sheriff returned said summons with the following endorsement thereon:

Came to hand May 5, 1894, at 11 a. m.

Executed May 8, 1894, on R. H. Thompson, judge police court, by delivering to him a copy of the within summons.

H. A. BELL, *S. J. C.*,
By F. P. CARROLL, *D. S.*

At a court held for the court aforesaid on the 11th day of June, 1894.

This day came the parties and by consent it is ordered that this cause be and is transferred to the common pleas division to be heard with the case of Bank of Kentucky *vs.* City of Louisville.

At a court held for the Jefferson circuit court, common pleas division on the 19th day of June, 1894.

Came parties by counsel and said case being heard was submitted and the court not being advised takes time.

At a court held for the court aforesaid on the 24th day of July, 1894.

The court being sufficiently advised filed an opinion herein:

Jefferson Circuit Court, Common Pleas Division.

BANK OF KENTUCKY, &c., *vs.* R. H. THOMPSON, Judge, &c. } Opinion.

These cases involved the liability of the several plaintiffs to municipal taxation. The Bank of Kentucky represents the
23 class of banks chartered before 1856; the Louisville Banking Company represents the banks chartered since that date, and the Third national the interests of the national banks of the city.

A bank chartered before 1856 and one whose charter is subsequent to that date were made plaintiffs, because in that year the following general statute became a law:

"All charters and grants of or to corporations, or of amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair other rights previously vested." (Gen. Stats., chap. 63, sec. 8, p. 861.)

Before that act was passed there was no general law giving the legislature control over charters; if the right to amend or repeal was not reserved in the charter it did not exist. But as to charters granted since that date the act quoted becomes a part as fully as if it was incorporated therein, unless a plain intent to exclude it is shown.

The charter of the Bank of Kentucky was approved February 22, 1834, that of the Louisville Banking Company, January, 1867. In the charters of all the banks interested in this litigation, it is pro-

vided in substance that at no time shall the tax exceed fifty cents on each $100 of stock therein.

In 1886, an act generally known as the "Hewitt bill," was passed to amend the revenue laws, by which it is provided that all banks in the State shall pay a tax of seventy-five cents upon the $100 of their stock, and certain other taxes for which they were not theretofore liable, but knowing that the rate of taxation could not be increased beyond the limit fixed in their charters, so far as banks created before February, 1856, were concerned, without their consent, the law required of all the banks as follows:

"That each of said banks, institutions and corporations, by its proper corporate authority, and with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress, or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of said bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever, so long as said tax shall be paid during the corporate existence of such bank.

"SEC. 5. The said banks may take the proceedings authorized by section 4 of this act at any time until the meeting of the
24 next General Assembly: *Provided*, they pay the tax provided for in section 1 from the passage of this act.

"SEC. 6. This act shall be subject to the provisions of section eight (8), chapter sixty-eight (68), of the General Statutes."

All of the banks concerned, filed their written consent in due time to pay the tax thus provided for.

The present constitution seeks to have all property taxed in proportion to its value.

"All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the General Assembly from providing for taxation based on income, licenses or franchises." Sec. 176.

The General Assembly in the charter for cities of the first class now propose to adopt a license tax for banks and certain other moneyed corporations, whereby each of them is required to pay not less than four, nor more than six per cent. of its gross earnings, exclusive of rent from real estate paying a tax to the city. The city council passed an ordinance conforming to the charter requiring each bank to pay an annual license tax of four per cent.

The banks ask in this action for a writ of prohibition against the city, to prevent it from enforcing the tax levied by the ordinance, for the reason, mainly, that the "Hewitt bill" constitutes a contract which the State has no right to violate, either by constitutional provisions or legislative enactment.

As the law touching all the questions raised by the demurrer of the city has recently undergone a thorough investigation by two distinguished circuit judges, who delivered carefully prepared and able opinions, I shall merely state the conclusions to which an attentive consideration of the authorities submitted by counsel has led.

As to the Bank of Kentucky and the banks represented by it, there is little room for argument in this court, because in the recent case of The Franklin County Court *vs.* Deposit Bank, &c., 87 Ky., 387, the court of appeals decided the identical questions now presented. The city of Frankfort assessed the corporate property of the Bank of Kentucky for municipal taxation. The bank relied upon its charter to defeat the tax.

The court held that the agreement in its charter that it should pay to the State a tax of fifty cents on each of its shares of stock and that this should be in full of all other tax constituted a contract which cannot be violated or changed without the consent of the bank.

Referring to the Dartmouth College case, where the principle first obtained prominence, the opinion says:

"This doctrine is so firmly rooted by the decisions of the Supreme Court of the United States, and so uniformly recognized by the courts of last resort of all the States, that a decision by us holding the contrary would be regarded as eminently sporadic."

The Dartmouth College case was decided in 1819, and has been steadily adhered to ever since. The doctrine established by it has sometimes been questioned but never overthrown.

It would be idle now to theorize whether or not in view of the mighty changes that have occurred in our social polity during the three quarters of a century which have elapsed, one legislature should be permitted to make a contract curtailing the sovereign power of taxation by which all succeeding legislatures and law-making bodies are to be bound through all the coming years. The Dartmouth College case is a fact in our jurisprudence, and Mr. Justice Miller realized it when he said in the opinion in the case of New Jersey *vs.* Yard, 95 U. S., 354.

"The writer of this opinion has always believed and believes now, that one legislature of a State has no power to bargain away the right of any succeeding legislature to levy taxes in as full a manner as the constitution will permit. But, so long as a majority of this court adhere to the contrary doctrine, he will when the question arises, join with the other judges in considering whether such a contract has been made."

It is true that in this State such power has been taken from the legislature by constitutional provision, but contracts of that character heretofore made and not affected by the statute of 1856 are as binding and inviolable as they ever were.

The demurrer to the petition of the Bank of Kentucky will have to be overruled.

Concerning the Louisville Banking Company and the banks it represents it is sufficient to say that, notwithstanding the definite

and formal terms of the contract entered into between them and the State by means of the "Hewitt bill," the legislature which passed that law gave them notice that the right was reserved to any succeeding legislature to amend or repeal it. "This act shall be subject to the provisions of section eight (8), of chapter sixty-eight (68), of the General Statutes."

The fact that the right was reserved by the State to repeal or modify the Hewitt bill and abrogate the contract with the banks under it, presents no valid objection in their behalf.

As long as the law stood unrepealed they were entitled to enjoy all the benefits of their contract, and they were not and could not be taxed except in the manner and to the extent indicated by their written consent; the obligation rested equally upon both parties as long as it lasted.

Section 8, of chapter 68, was as much a part of the contract as if it had been embodied in the writing. This question was fully considered in Griffin *vs.* Kentucky Ins. Co., 3d Bush, 592, and Clark *vs.* Louisville Water Co., 143 U. S., page 1. The demurrer to the petition of the banking company will have to be sustained.

The national banks derive all their powers from Congress
26 and their corporate rights cannot be abridged nor in any manner interferred with by a State legislature, but with reference to taxation they occupy the same position that State banks of issue hold. The only limitation placed by Congress upon the power of the State to tax them being that they shall not be discriminated against in this particular. City National Bank of Paducah *vs.* City of Paducah, 10 Ky. Law Rep., 506.

The fact that — are banks in the State which by contracts in their charters made before national banks came into existence, pay a smaller tax than is assessed against national banks and other similar institutions organized since the national banking act became a law can make no difference. All that is required is that as far as the State has the power to control the matter national banks shall not be taxed at a higher rate than it taxes the State banks. In the case of Lionberger *vs.* Rowe, 9 Wallace, 468, it is said:

"Congress meant no more by the second limitation in the proviso to the 41st section of the national banking act than to require of each State as a condition to the exercise of the power to tax the shares in national banks, that it should, as far as it had the capacity, tax in like manner the shares of banks of issue of its own creation.—Syllabus."

"The measure had reference to prospective legislation by the States, and its object was accomplished when the States conformed as far as practicable, their revenue systems to it. Exact conformity was required if obtainable, but the law-making power did not intend such an absurd thing as that the power of the State to tax should depend on its doing an act which it obliged itself not to do."

As the national banks will be taxed in the same manner and only to the same extent that the State banks organized since February, 1856, will be taxed, it follows that there is no discrimination against

them: therefore, the demurrer to the petition of the Third national will have to be sustained.

It would be more satisfactory to hold that all the plaintiffs are equally liable, or that none of them is subject to municipal taxation, but the law must be given as it is.

EMMET FIELD, *Judge.*

At a court held for the court aforesaid on the 24th day of July, 1894.

This cause having been heard and submitted, and the court being advised, it is considered by the court that the petition herein does not set forth a cause of action, and the demurrer to the said petition is sustained; and the plaintiff declining to plead further it is adjudged that the petition of the plaintiff be and the same is hereby dismissed; and it is adjudged that the defendants recover of the plaintiff their costs herein expended; for which they may
27 have execution; to all of which the plaintiff excepts and prays an appeal to the court of appeals of Kentucky, which is granted.

STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing 18 pages, this included, contain a full, true and complete transcript of the record and proceedings had in the case wherein Louisville Banking Company is plaintiff, and R. H. Thompson, judge of the police court of the city of Louisville, is defendant, No. 4340, as the same appears of record and on file in my said office.

Witness my hand this 17th day of August, 1894.

JOHN S. CAIN,
Clerk of Jefferson Circuit Court.

Upon which transcript was endorsed the following statement:

LOUISVILLE BANKING COMPANY, Appellant, *vs.* THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.	Appeal from the Jefferson Circuit Court, Common Pleas Division.

The judgment appealed from was rendered July 24, 1894, and is on page 18 of the Record. Appeal granted below. Helm & Bruce, Humphrey & Davie, for appellant. Henry S. Barker for appellees.

At a court of appeals held in and for the Commonwealth of Kentucky, at the capitol in the city of Frankfort, on the 9th day of October, A. D. 1894, the following order was made:

LOUISVILLE BANKING COMPANY, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees. } Jefferson.

Ordered that this case be continued for oral argument.

Afterwards at a court of appeals held as aforesaid, on March 5, A. D. 1895, the following order was entered:

LOUISVILLE BANKING COMPANY, Appellant,
vs.
THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees. } Jefferson.

By agreement of all the parties and on their motion, it is ordered that these seventeen cases be heard together, and said causes coming on to be heard were argued by A. P. Humphrey for the
28 banks and Ira Julian for the Commonwealth, counties and cities and laid over until toworrow for further hearing.

Afterwards, on the 6th day of March, A. D. 1895, the following order was entered herein:

These causes coming on to be heard were argued by D. W. Lindsay for the banks, W. McD. Shaw and Hugh Rodman for the counties and cities, and laid over for further hearing on tomorrow.

Afterwards, on March 7, 1895:

These causes again coming on to be heard were argued by Wm. Goebel for the banks and H. C. Barker for the cities and counties and laid over for further hearing on tomorrow:

Afterwards, on March 8, 1895:

These causes again coming on to be heard were argued by John W. Rodman and T. L. Edelen for the banks and laid over for further hearing on tomorrow.

Afterwards, March 9, 1895:

These causes again coming on to be heard were argued by James P. Helm for the banks and laid over for further hearing on next Tuesday.

Afterwards, on March 12, 1895, the following order was entered herein:

These causes again coming on to be heard were argued by Wm. J. Hendrick for the Commonwealth and submitted.

Afterwards at a court of appeals held as aforesaid on the 1st day of June, A. D. 1895, the following judgment was entered:

LOUISVILLE BANKING COMPANY, Appellant, *vs.* THE CITY OF LOUISVILLE, R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Appellees.	Appeal from the Jefferson Circuit Court, Common Pleas Division.

The court being sufficiently advised, it seems to them the judgment herein is erroneous. It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion herein, which is ordered to be certified to said court.

It is further considered that the appellants recover of the appellees their costs herein expended.

Judges Lewis, Paynter and Guffy dissenting.

At the same time, to wit, on June 1, 1895, the court, through Chief Justice Pryor, delivered the following opinion:

COMMONWEALTH, for Use, &c., *vs.* FARMERS' BANK OF KENTUCKY.	Franklin.
FARMERS' BANK OF KY. *vs.* BOARD OF COUNCILMEN OF CITY OF FRANKFORT.	Franklin.
FARMERS' BANK OF KY. *vs.* COUNTY OF FRANKLIN, &c.	Franklin.
BANK OF KY. *vs.* ARMSTRONG, Sheriff, &c.	Franklin.
29 PRESIDENT, DIRECTORS, AND COMPANY OF THE Bank of Ky. *vs.* BOARD OF COUNCILMEN OF CITY OF FRANKFORT, &c.	Franklin.
COMMONWEALTH, for Use, &c., *vs.* BANK OF KY.	Franklin.
SAME *vs.* DEPOSIT BANK OF FRANKFORT.	Franklin.
DEPOSIT BANK OF FRANKFORT *vs.* FRANKLIN COUNTY, &c.	Franklin.
COMMONWEALTH, for Use, &c., *vs.* FRANKFORT NATIONAL BANK.	Franklin.

SAME *vs.* STATE NATIONAL BANK.	Franklin.
THIRD NATIONAL BANK *vs.* CITY OF LOUISVILLE, &C.	Jefferson C. P. Div.
LOUISVILLE BANKING CO. *vs.* SAME.	Jefferson C. P. Division.
CITY OF LOUISVILLE, &C., *vs.* PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK of Ky.	Jefferson C. P. Div.
PRESIDENT, DIRECTORS, AND COMPANY OF THE NORTHern Bank of Ky. *vs.* BOURBON COUNTY.	Bourbon.
CITY OF COVINGTON *vs.* FIRST NATIONAL BANK OF COVINGTON.	Campbell.
SAME *vs.* GERMAN NATIONAL BANK OF COVINGTON.	Campbell.
FARMERS' BANK OF KY. *vs.* HENDERSON.	Henderson

(Filed June 1, 1895.)

COMMONWEALTH OF KENTUCKY:

I, Abram Addams, clerk of the Kentucky court of appeals, hereby certify that the following 58 pages (being numbered 1 to 57 inclusive, with an interpolated number, viz: "page 1 continued") contain a true, full, and complete transcript of the record and proceedings had in said court in the case of Louisville Banking Company, appellant, against The City of Louisville, R. H. Thompson, judge of the police court of the city of Louisville, appellees, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, this 10th day of April, A. D. 1897.

ABRAM ADDAMS,
Clerk Kentucky Court of Appeals.

[SEAL.]

My fee for this transcript, $24.25.

30 *Index.*

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STATE OF KENTUCKY, }
Jefferson County. }

Jefferson Circuit Court, Common Pleas Division.

LOUISVILLE BANKING COMPANY, Plaintiff, }
versus }
R. H. THOMPSON, Judge of the Police Court of the City of Louisville, Defendant. } No. 4340. Order.

At a court held on the 13th day of April, 1897:

This day came the plaintiff, The Louisville Banking Company, and filed the opinion and mandate of the court of appeals herein, the mandatory part of which is as follows: "It is therefore considered that said judgment be reversed and cause remanded for further proceedings consistent with the opinion." And thereupon, in pursuance of said opinion and mandate, the judgment heretofore entered herein is set aside and held for naught.

It is now adjudged by the court that the plaintiff's petition sets forth a good cause of action and the defendant's demurrer to the said petition is overruled, and the defendant declined to plead further herein, and thereupon the plaintiff moved for judgment; and it is considered that the prayer of the plaintiff's petition be
31 granted, and that the defendant, R. H. Thompson, judge of the police court of the city of Louisville, be, and he is hereby

prohibited from proceeding further with the warrant against the plaintiff, Louisville Banking Company, mentioned in the petition, in the police court in the city of Louisville, or making any further order therein; and it is further considered and adjudged that the plaintiff recover of the defendant its costs herein expended, and may have execution therefor, and the parties are hence dismissed.

STATE OF KENTUCKY, }
Jefferson County. }

I, John S. Cain, clerk of the Jefferson circuit court, do hereby certify that the foregoing is a full, true and complete copy of the order entered April 13, 1897, in the case wherein Louisville Banking Company is plaintiff and R. H. Thompson, judge of the police court of the city of Louisville is defendant, No. 4340, as the same appears of record and on file in my said office.

Witness my hand and seal as clerk of said court, this 16th day of April, 1897.

JOHN S. CAIN,
[SEAL.] *Clerk Jefferson Circuit Court.*

The President of the United States of America to Samuel H. Stone, auditor public accounts Commonwealth of Kentucky; Charles Finley, secretary of state Commonwealth of Kentucky; George W. Long, treasurer of the Commonwealth of Kentucky; City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America, for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court, by Louisville Banking Company, which you shall in nowise omit, under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court hereto affixed, at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest:

[SEAL.] THOS. SPEED,
C. C. C., K. D.

MEMORANDUM.—The defendants are to enter their appearance in the suit in the clerk's office, on or before the 7th day of June next, the day at which the writ is returnable, otherwise the bill may be taken *pro confesso*.

THOS. SPEED, *Clerk.*

Endorsed on the back of said subpœna is the following return:

Executed April 24th, 1897, on the City of Louisville by deliver-

ing a copy of within spa. in ch'y to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
United States Marshal,
By R. E. HAWES, *D. M.*

Fees $2.00.

32 Executed May 4th, 1897, on Chas. Finley, secretary of state; May 14th on Geo. W. Long, treasurer; May 15th on Samuel H. Stone, auditor of public accounts, by delivering a copy of within spa. in ch'y to each of them.

JAMES BLACKBURN,
United States Marshal,
By P. D. TUCKER, *D. M.*

Fees $6.00.

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
versus
SAMUEL H. STONE, &c., Defendants.
No. 6561. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of Louisville Banking Company, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true, in such manner and form as the same *is* therein set forth and alleged, demurs to said bill, and for cause of demurrer, states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court, whether it shall be compelled to make any further or other answer to the said bill; and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

I hereby certify, as counsel for the defendant City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, } sct:
Jefferson County, }

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

33 Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897. My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant, } No. 6561. Stipulation.
versus
SAMUEL H. STONE, &c., Defendants. }

It is stipulated and agreed that the defendant, City of Louisville, may file a demurrer to the complainant's bill and an answer at the same time, without waiving the demurrer.

HELM & BRUCE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant, City of Louisville.

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant, } No. 6561.
versus
SAMUEL H. STONE, &c., Defendants. } In Equity.

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of Louisville Banking Company, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering—

This defendant denies that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks, was unsatisfactory, or that there were then four banks, or any bank, chartered by said State prior to the year 1856, whose original charter life had not ex-

pired, or which held any charter or other contract or contracts beyond the power of the State to repeal, or that the Commonwealth was by any alleged contract or contracts bound, beyond its legislative control or power to alter, amend, and repeal, to receive fifty cents on each share of one hundred dollars of stock in said banks, or either of them, referred to as the "old banks," in full of
34 its claim for taxation upon all the different kinds of property of said banks.

This defendant denies that there was any complication with the said old banks, or that in addition to such alleged complication with said old banks, the national banks in the State were claiming the right, or that they had the legal right, to be put upon a footing of equality as to taxation with said four old banks, or either of them, or that the courts of Kentucky had held that the national banks in said State could not be subjected to a heavier burden of taxation than said four old banks.

This defendant denies that no other bank in the State could be taxed at a materially higher rate than fifty cents on each share of one hundred dollars of its stock, without practically driving it out of business, or that it would thereby be unable to compete with said four old banks and the national banks, or that for this reason by the express provisions of the respective charters granted by the State, or by the general law, all banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks.

This defendant denies that the State was dissatisfied with the existing tax rate against banks and similar corporations, or desired to increase the rate, or desired, for the reason alleged, to have the tax rate on all the banks in the State uniform, or that this could only be done by exempting them from local taxation and increasing their tax to the State, or that it was not within the power of the State to increase the tax rate against the old banks except with their consent, or that they were asked, in the interest of uniformity, to consent, or that, in the interest of uniformity, or to secure to the banking interests in the State repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner stated in the bill to the scheme of taxation therein described, or, as stated in the provisions of the act of May 17, 1886, referred to and quoted in the bill.

The defendant states, section six (6), article two (2), of said act of May 17, 1886, pertaining to the taxation of banks, expressly provided that said act (meaning article 2 therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted

may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6), article two (2), of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its
35 power to amend or repeal at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks, from county and municipal taxes therein provided for, and a contrary intent was not therein plainly expressed.

This defendant further states that by section five (5) of article twelve (12) of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant further states that the charter or grant of or to the complainant, or the amendment or amendments to its charter by the legislature of the State of Kentucky, and under which the complainant was organized or is engaged in carrying on its business, were enacted or granted since February 14, 1856, and all provisions therein with respect to the rate of taxation to be paid by complainant to the State, or exempting complainant from county and municipal taxation, were repealed by said section five (5), article twelve (12), of said act of May 17, 1886.

This defendant denies that said act of May 17, 1887, and complainant's alleged acceptance thereunder, as provided by said statute, and complainant's payments thereunder and in accordance therewith, to the State of a sum in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and complainant and its stockholders on the other part, continuing during the legal existence of complainant's corporate life, or that the State was equally bound thereby, or had no right to retire therefrom, or amend or repeal the same, as provided for in section six (6), article two (2), of said act of May 17, 1886.

This defendant denies it was agreed between the State and the complainant that said alleged contract should subsist during the charter life of complainant, without the condition or qualification embodied in said section six (6), or that the State of Kentucky was unmindful of its alleged contract obligations with complainant, or others, when through its General Assembly it undertook, on November 11, 1892, to tax all the banks in the State in a manner different from that provided for in said alleged contract, and to subject them to all manner of local taxation, or that as applied to complainant the tax under the act of November 11, 1892, will exceed the tax which it would have to pay under the Hewitt bill by $10,000.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class,"

approved July 1, 1893, or in pursuance thereof, although it was claimed that such authority existed when said ordinance was adopted; or that the defendant, on the demand of said license
36 tax being refused, commenced legal proceedings in the city court of Louisville in behalf of the city against all of said banks and trust companies, including the complainant.

This defendant denies that it was agreed between the city of Louisville and the commissioners of the sinking fund of the city of Louisville upon the one part, and the said banks and trust companies, including the complainant, upon the other, that, pending the litigation concerning the validity of said ordinance providing for a license tax upon said banks and trust companies, payments and loans to said commissioners of the sinking fund should be made in the manner or upon the terms and conditions, as stated in complainant's bill, or that this defendant agreed that said litigation should be inaugurated, or that such alleged payments or loans to said commissioners of the sinking fund should be without prejudice to the alleged rights of said banks and trust companies, or either of them.

This defendant denies that it agreed, as alleged in complainant's bill, to the selection of any bank or company to test the questions involved in said litigation, or that this defendant made, entered into, or was a party to said alleged contract or agreement, written or verbal, with respect to said litigation over the validity of said license tax, or the ordinance providing for the collection thereof from the banks and trust companies in the city of Louisville, or that said banks and trust companies should be divided into three classes, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

This defendant denies that it was understood that the trust or title companies, which are alleged to have accepted the provisions of the Hewitt bill would fall in said class "B," or that this defendant agreed that if any bank in any class should eventually fail to establish the existence or validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, or that this defendant agreed that if any bank of any class should succeed in establishing the alleged contract, or the validity thereof under the Hewitt bill, that that should exempt all banks and trust companies, or any bank or trust company falling within that or any of said alleged classes from the payment of taxes, except as provided in the Hewitt bill.

This defendant denies that said alleged agreement, an alleged copy of which or the substance of which is filed with complainant's bill, marked "A," was signed by the attorney for the city of Louisville under the authority or direction of the mayor, or that this defendant executed or delivered said alleged contract or agreement, or that the same was ever authorized, ratified or approved by the general council and mayor of the city of Louisville, and said alleged

agreement or contract set forth in said copy marked "A," is
37 not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law, and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled "An act for the government of cities of the first class," approved July 1, 1893, to levy and collect its municipal taxes from the complainant and other banks and trust companies.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been, a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together, had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations, or covenants, or either of them, contained in said alleged agreement or contract, at the time, in the manner, or under the circumstances alleged in complainant's bill, or otherwise.

This defendant denies that said alleged agreement or contract was duly executed, or on the faith, or in reliance thereon, the various banks and trust companies of the city of Louisville, including the complainant, or either of them, paid into the said sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the alleged minutes of said commissioners of the sinking fund; or that, at a still later date, the said banks and trust companies, except those already involved in the alleged test cases, paid the whole amount of the taxes claimed against them by this defendant, without reservation, until the question should be finally disposed of, or that this was done without prejudice to the alleged rights of said banks and trust companies, or was not to be ' emed a waiver by them of any of their claimed rights, or that same was done to prevent confusion from coming into the n nagement of said sinking fund, or that the taxes against banks claimed by the city had been transferred to the sinking fund of said city, except as provided for in said license-tax ordinance, which was invalid and unconstitutional, because the license tax aforesaid was, and was intended to be, by said ordinance in lieu of the *ad valorem* tax levied upon all other assessed, individual and corporate, tangible and intangible, property in the city of Louisville, and thus violated the constitution of the State of Kentucky.

38 This defendant denies that it made any agreement that the said alleged payments to said sinking fund should not last

longer than the alleged final decision in favor of the banks, if such decision should be rendered, or that the amount paid by the banks and trust companies to this defendant, or said commissioners of the sinking fund, under said alleged agreement, was or is over $150,000.

This defendant denies that with a view of testing every phase of the question, or so that a decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to said alleged contract, or that there was any contract with this defendant to do so, or that the Bank of Kentucky in the suit it brought represented the Bank of Louisville, or that the Louisville Banking Company in the suit it brought represented all or either of the other banks and trust companies in the city whose charters were granted by the State since 1856, or that the Third national bank, in the suit brought by it, represented all or either of the other national banks of the city.

This defendant denies that it was a party to the said suits brought by the Bank of Kentucky, Louisville Banking Company, and the Third national bank, or either of them, or that this defendant prosecuted an appeal from the judgment of the Jefferson circuit court against the Bank of Kentucky, or that either the Louisville Banking Company or the Third national bank prosecuted an appeal from the judgment of said court against this defendant, or that either of said three suits was really against the city of Louisville; or that in the court of appeals this defendant was represented by its corporation counsel, or that said counsel represented any party in either of said cases in said court or the Jefferson circuit court, except R. H. Thompson, judge of the police court of the city of Louisville, and, indirectly, said commissioners of the sinking fund, for whom he was then the regularly employed attorney, and to whom the license tax against said banks and trust companies, under the ordinance aforesaid, was made payable.

This defendant denies that it was a party to the record in the court of appeals on either of said three appeals, or as such was represented in that court by its official attorney.

This defendant states that the records in said three cases will show what questions were submitted to the circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts, and this defendant denies all statements in complainant's bill inconsistent with the records aforesaid. It is true, however, that the court of appeals, on June 1, 1895, decided on said three appeals that the license tax for the fiscal year ending August 31, 1894, fixed by the ordinance aforesaid, was invalid and not enforceable against the Bank of Kentucky, Louisville Banking Company, and the Third national bank, which had complied
39 with the provisions of the act of March 17, 1886, and that the provisions of the constitution of the State of Kentucky, adopted September 28, 1891, and of the general revenue law, approved November 11, 1892, did not repeal the provisions of article two (2) of the Hewitt bill, with respect to said three banks, and that said three banks had an irrepealable contract with the State to pay

their taxes, as provided in the Hewitt bill; and in pursuance of said decision the said judge of the police court of the city of Louisville was prohibited from taking any further steps or proceedings upon the warrants issued against said three banks and pending in said police court for carrying on a banking business during the fiscal year ending August 31, 1894, without paying the license tax, as provided in the ordinance aforesaid.

This defendant denies that said former adjudication constitutes a bar to any further claim by or on behalf of the city of Louisville for *ad valorem* taxes, or other taxes not involved in said actions against said three banks which instituted said actions, or a bar to any claim for *ad valorem* taxes by or on behalf of this defendant against complainant, or either of the other banks and trust companies in the city of Louisville, provided, or in the event, the court of appeals of the State of Kentucky at any time should overrule its said decision rendered on June 1, 1895, in the actions aforesaid, and decide that the banks and trust companies in said State have no such irrepealable contract, and are bound to pay taxes on their property, tangible and intangible, to the State and to the counties and municipalities in which their places of business are located, at the same rate fixed therein as against individuals and all other corporations, in accordance with the provisions of the State constitution of September 28, 1891, and said general revenue law of November 11, 1892, set forth in complainant's bill.

This defendant denies that the scheme of taxation contained in said act of November 11, 1892, impairs the obligation of complainant's alleged contract, or is, for that reason, in violation of the provision of the Federal Constitution, prohibiting a State from impairing the obligation of a contract, or that said scheme of taxation is in violation of section 181 of the State constitution, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes," and this defendant denies that the General Assembly, by the provisions of the revenue law of November 11, 1892, has imposed taxes for the purposes of any county, city, town, or other municipal corporation, and the court of appeals of the State of Kentucky has construed said section of the State constitution as meaning that the General Assembly shall not impose or fix the *amount* or *rate* of taxes for the purpose of any county, city, town, or other municipal corporation; and has further decided, as has the Supreme Court of the United States,
40 that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property, of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that the city of Louisville claimed, or threatened at or before the institution of this action, or does now claim or threaten, or so long as said decision of the court

of appeals of Kentucky, rendered June 1, 1895, referred to in the complainant's bill, remains in full force and effect, will claim the right to collect, or threaten to collect, from the complainant any tax held to be unlawful by said decision, or under the revenue law of November 11, 1892, on either an assessment by the city assessor of this defendant, or by the State board of valuation and assessment.

This defendant denies that the State board of valuation and assessment will, unless restrained by this honorable court, proceed to assess the complainant in the manner pointed out by the act of November 11, 1892, when it has no lawful right to do so, or that it will thereby cast a cloud upon the complainant's alleged right to pay taxes under and in accordance with its alleged contract, or that the auditor will, unless restrained, certify said assessment to the county court clerk of Jefferson county, or that said clerk will, in turn, certify the same to the tax collector of the city of Louisville, or that this defendant will attempt to collect from the complainant a tax in its favor upon said assessment, or that the complainant will thus be subjected to harassment or litigation, or that if said assessment be not restrained or is allowed to be made the State of Kentucky will claim that unless the complainant pays taxes according to said alleged illegal scheme devised by said State that the complainant would be subject to the penalties and interest on State taxes, as provided in the revenue law of November 11, 1892.

This defendant denies that, unless restrained, the complainant will be improperly annoyed or harassed with litigation, or the value of its stock greatly, or at all, impaired, or the stockholders injured by suits instituted by this defendant or the State in their attempt respectively to enforce, as against the complainant, the taxes attempted to be imposed or the penalties denounced by the statute aforesaid.

This defendant denies that it was, at or before the institution of this action, or is now insisting that the auditor of the State, the defendant, Samuel H. Stone, shall certify to the county court clerk of Jefferson county the assessment alleged to have been, or to be illegally, made by said State board, so that its tax collector may endeavor to enforce, as against the complainant and the other banks and trust companies in the city, the taxes for city purposes; and this defendant denies that the said auditor has threatened to
41 so certify said assessment, or will, unless restrained, certify said assessment for the years 1895, 1896, and 1897, or either of them, to the said clerk, or that said clerk will certify the same to the tax collector of the city of Louisville, or that any further assessment by said State board, or for the years 1895, 1896, and 1897, or either of them, has been, or is, threatened, or will be made, or that any such certification thereof has been, or is, threatened, or will be made by said auditor, so long as said decision of the court of appeals of Kentucky of June 1, 1895, is not overruled and remains in full force and effect.

This defendant, for further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24, 1897,

in the case of The Deposit Bank of Owensboro *vs.* Daviess County, and other bank tax cases, wherein the same legal questions were involved and issues were made, as in the three cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court, in said three cases delivered June 1, 1895; and in the cases of Franklin County Court *vs.* Deposit Bank of Frankfort, Same *vs.* Bank of Kentucky, and other bank tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and said court furthermore decided that no bank, State or national, trust company, or other similar institutions in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all said banks and similar institutions in the State, were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2) of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the said reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of said four old banks, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, referred to in the complainant's bill, and were all subject to amendment or repeal by the legislature.

42 This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit, sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a

rehearing, some of which have been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose, on its part, to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896 and 1897 with the auditor or the State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant, therefore, submits that the complainant was not, at the institution of this action, and is not now, being subjected to any false claim or claims, nor to any suit or suits, nor will it suffer irreparable or any injury, unless an injunction *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment of the franchise of the complainant until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for the Defendant City of Louisville.

43 STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information, he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public of Jefferson County, Kentucky.

Circuit Court of the United States for the Sixth Circuit, District of Kentucky, Louisville, Ky.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF KENTUCKY, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

PRESIDENT, DIRECTORS, AND COMPANY OF THE BANK OF LOUISVILLE, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

WESTERN BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

LOUISVILLE BANKING COMPANY, Complainant,
vs.
SAM'L H. STONE, Defendant.

UNION NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, Defendant.

LOUISVILLE CITY NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

BANK OF COMMERCE, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

AMERICAN NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

44 FARMERS' AND DROVERS' BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

THIRD NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

FIRST NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

CITIZENS' NATIONAL BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

GERMAN SECURITY BANK, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

FIDELITY TRUST AND SAFETY COMPANY, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

LOUISVILLE TRUST COMPANY, Complainant,
vs.
SAM'L H. STONE, ETC., Defendant.

This day came the complainants in each of the above-entitled causes and filed herein notice of motion to be entered herein this day. And thereupon came the complainants, The Bank of Kentucky and The Bank of Louisville, by Humphrey & Davie, counsel, and the complainants in all of the other causes, by Helm & Bruce, counsel, and moved the court to enter an order herein enjoining and restraining the defendants Samuel H. Stone, Geo. W. Long and Chas. Finley, composing the board of valuation and assessment, from valuing or certifying the value of the intangible property and franchises of the complainants under the act of November 11, 1892, until the further order of the court herein; and enjoining and restraining the other defendants herein, to wit: The City of Louisville, The County of Franklin, and The Board of Councilmen of the City of Frankfort, from endeavoring to collect any taxes under such certification until the further order of the court.

And at the same time, the City of Louisville appearing herein by H. L. Stone, city attorney, and the County of Franklin appearing herein by Ira Julian and J. H. Polsgrove, and the Board of Councilmen of Frankfort appearing herein by Ira Julian, objected to the said motion, and the same was argued and submitted, and the court not being advised takes time.

45 And at the same time came the Board of Councilmen of the City of Frankfort and the County of Franklin, by the said Ira Julian and J. H. Polsgrove, and filed herein a demurrer to the bill of complaint of the Bank of Kentucky to the jurisdiction of the court, and also a general demurrer, and by consent and without waiving the effect of the said demurrers, filed answers of the said Board of Councilmen of the City of Frankfort and the County of Franklin to the said bill of complaint.

And also came the said Samuel H. Stone, Geo. W. Long, and Chas. Finley, by W. S. Taylor, attorney general, and filed herein their several demurrers to the said bills of complaint. And the said cause having been argued by counsel upon the said general and special demurrers as well as upon the demurrers of the City of Louisville, was submitted, and the court not being advised takes time.

WM. H. TAFT,
Circuit Judge.

May 28, 1897.

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING CO., Complainant,
vs.
SAMUEL H. STONE, &c., Defendants. } No. 6561.

The demurrer of the defendants Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, to the bill of complaint of Louisville Banking Co., complainant:

These defendants, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained, to be true in such manner and form as the same *is* therein set forth and alleged, demur to said bill and for cause of demurrer states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against these defendants.

Wherefore and for divers other good causes of demurrer appearing in the said bill these defendants do demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

46 I hereby certify as counsel for the defendants Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer of the State of Kentucky, in the foregoing demurrer, that, in my opinion, the same is well founded in point of law and proper to be filed.

W. S. TAYLOR,
Attorney General of the State of Kentucky.

47 And at another term of our said court held for its February term, 1898, continued and held, to wit, on May 9th, 1898—

LOUISVILLE BANKING COMPANY
vs.
SAMUEL H. STONE.

Came this day the complainant in the above-styled case, wherein Samuel H. Stone is defendant, and filed herein an amended and supplemental bill of complaint, and complainant also filed herein notice duly served of the motion to be made this day; and came Samuel H. Stone, Charles Finley, and G. W. Long, by Richard Ernst, their attorney, and entered appearance to such motion, and also came the City of Louisville and objected to the filing of said supplemental bill of complaint and said motion and filed herein

affidavits to be read in this case, and also came the City of Frankfort and Franklin County and objected to the motion made in this case, to which these defendants are parties, and, the court being advised, it is now ordered, adjudged, and decreed that the said several defendants in the above-styled case are enjoined and restrained from making or certifying any assessment against the complainant for the years 1895, 1896, 1897, and 1898 or any of them, and the defendant The City of Louisville is enjoined and restrained from bringing or maintaining any action against the complainant on account of the assessments heretofore made and certified for the years 1893 and 1894, or from attempting, by distraining or otherwise, from collecting taxes on said assessments for either of said years. This order is only to stand until Saturday, June 4th, 1898, when the court will announce its decision on pending questions.

To all of which defendants excepted.

48 The amended bill above referred to is as follows:

United States Circuit Court, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
vs.
SAMUEL H. STONE, &c., Defendants.
} Amended and Supplemental Bill.

The Louisville Banking Company, complainant herein, by way of amended and supplemental bill in this cause, says that since the filing of the original bill herein and the hearing before this court of the motion for an injunction the defendants Samuel H. Stone, Charles Finley, and G. W. Long, being respectively the auditor of public accounts, the secretary of state, and the treasurer of the State of Kentucky, and as such constituting the board of valuation and assessment of the State of Kentucky, have threatened and are now threatening to assess and will as such board, unless restrained by this honorable court, proceed to assess your orator for taxation in the manner pointed out by the act of November 11th, 1892, referred to in the original bill herein, for the year 1898, when they have no lawful right to do so for the reasons shown in the original bill herein, and will thereby cast a further cloud upon your orator's right to pay taxes under and in accordance with its contract, which is fully set forth and explained in the original bill herein; and the said Samuel H. Stone, as auditor aforesaid, will, unless restrained, certify and assessment to the county clerk of Jefferson county, Kentucky, who will in turn certify the same to the tax collector of the city
49 of Louisville, and said city will attempt, by distraint and otherwise, to collect from your orator a tax in favor of said city upon said assessment for the year 1898.

Wherefore your orator prays as in its original bill herein, and that a writ of subpœna issue on this supplemental bill against the defendants to appear and answer same (but not under oath, which is waived), and that they and each of them be enjoined from making or certifying any assessment for taxation against your orator or attempting to collect any tax from your orator for the year 1898

or any other year until the final order and determination of this court, and for all general and equitable relief to which your orator may be entitled.

HELM & BRUCE,
For Complainant.

Theodore Harris says he is the president of complainant, and that the statements in the foregoing supplemental bill are true.

THEODORE HARRIS.

Subscribed and sworn to before me by Theodore Harris this May 6th, 1898—

HUSTON QUIN,
N. P. J. C., Ky.

Commission expires with the next Kentucky legislature.

50 And on another day of our said court, to wit, June 4th, 1898—

It is ordered by the court that the preliminary injunction heretofore granted in the foregoing cause be, and the same is hereby, continued until 25th day of June, 1898.

51 And on another day of our said court, to wit, Saturday, June 25th, 1898—

The court, being advised, filed its opinion herein.

It is therefore adjudged, ordered, and decreed as follows:

First. The demurrer of the defendant City of Louisville to the bill of complaint is hereby overruled; to which said City of Louisville excepts.

Second. The demurrer of the defendant Samuel H. Stone, George W. Long, and Charles Finley to the bill of complaint is overruled; to which the defendants severally except.

Third. And thereupon the complainant, by Helm & Bruce, counsel, filed herein its replication to the answer of the city of Louisville.

And by consent this cause came on to be heard for final decree. The complainant read upon the hearing its bill of complaint and the exhibits filed therewith, viz:

1. The exhibit, being the record of the proceedings in the case of The Louisville Banking Company *vs.* R. H. Thompson, judge of the police court of the city of Louisville.

2. The exhibit, being the order entered upon the mandate from the court of appeals in said case of Louisville Banking Company *vs.* R. H. Thompson, judge of the police court of the city of Louisville.

3. Exhibit, being the certificate of John H. Leathers, cashier and secretary of the board of directors and stockholders of said complainant, in accepting the provisions of the revenue act of May 17, 1886, commonly known as the Hewitt bill.

The defendant City of Louisville read on the hearing its
52 answer and the stipulation between the complainant and said defendant filed herein June 25, 1898, together with the ordinances and special statutes therein mentioned and referred to.

It is now adjudged, ordered, and decreed that the defendants Samuel H. Stone, George W. Long, and Charles Finley be, and they are hereby, perpetually enjoined and restrained from proceeding to value the franchise of the complainant under the act of November 11, 1892, for the years 1895, 1896, 1897, and 1898, with which latter year the corporate existence of the complainant terminates, and are enjoined and restrained from certifying such value to the county clerk of Jefferson county or to any officer of the city of Louisville; and the defendant City of Louisville is enjoined and restrained from endeavoring to collect any tax upon any such valuation, sand the complainant, by making payments in accordance with said act of the 17th of May, 1886, known as the Hewitt law, is discharged in full from all taxes to be exacted from it under any form or by any authority.

It is further adjudged, ordered, and decreed, by reason of the plea of *res judicata* relied on by complainant in its bill and as shown by the exhibits therewith, — has an established contract with the Commonwealth of Kentucky under the provisions of article 2 of the act of the General Assembly of the State of Kentucky entitled "An act to amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, and the acceptance of the same by the complainant, the terms of which contract the Commonwealth of Kentucky cannot alter or change without the consent of the complainant; that by the terms of this contract the complainant and its shares of stock cannot, during its corporate existence, be
53 assessed for taxation for State purposes in a different mode or at a greater rate of taxation than as prescribed in said act and can be assessed for taxation and taxed for county and municipal purposes only upon its real estate used by it in conducting its business; that the provisions of the present constitution of the Commonwealth of Kentucky and the act of November 11, 1892, in so far as they are intended to provide or do provide for any assessment or taxation of the complainant's property, rights of property, or franchise, or shares of stock, except to the extent and in the manner provided by sections 1, 2, and 3 of article II of the said act approved May 17, 1886, and except to assess a tax for county and municipal purposes upon its real estate used in conducting its business, are in violation of and repugnant to the Federal Constitution and void.

And it is further adjudged that the complainant recover of the defendants its costs in this action expended.

And now came defendants and prayed an appeal in open court and tendered their assignment of errors, whereupon the court allows the appeal and orders the assignment of errors to be filed and fixes the appeal bond herein at $1,000.

The replication above referred to is as follows:

54 Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
vs.
S. H. STONE, &c., Defendants. } Replication.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

HELM & BRUCE,
Solicitors for Complainant.

54½ The opinion above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

LOUISVILLE BANKING CO.
vs.
SAMUEL H. STONE, ETC. } No. 6561.

LOUISVILLE BANKING CO.
vs.
CITY OF LOUISVILLE. } No. 6562.

Before Harlan, circuit justice, and Taft and Lurton, circuit judges.

TAFT, circuit judge, delivered the opinion of the court:

These cases present substantially the same questions as those already passed upon in the case of the Bank of Kentucky against the same defendants. The complainant company was a corporation organized after the act of 1856, but before the Hewitt act. It duly accepted the provisions of the Hewitt act. After the passage of the revenue act of November, 1892, and the adoption of the ordinance by the city of Louisville imposing a license upon the gross receipts of banks doing business within its limits, a warrant was sued out by the city of Louisville in its police court against the Louisville Banking Company for a failure to pay the license. This bank filed a petition for a writ of prohibition in the circuit court of Jefferson county against R. H. Thompson, the police judge, averring that the ordinance of the city of Louisville was void as impairing an obli-

gation of the complainant's contract with the State under the Hewitt act, and that any authority given to the city of Louisville to pass such ordinance by the revenue act of November, 1892, was likewise void as impairing the obligation of the contract. The petition prayed that the police judge might be prohibited from taking jurisdiction of the proceeding against complainant for a violation of the ordinance. Issue was joined on this petition by the defendant, The Judge of the Police Court of the City of Louisville.

The City of Louisville, though not a party in name,
54½ was, in reality, the party defendant, and appeared by counsel. Indeed, the proceedings were taken for the purpose of testing the validity of the license ordinance by agreement between the city attorney and the complainant bank. The Jefferson circuit court found the issues in favor of the defendant and entered a decree dismissing the petition. Thereupon the complainant banking company caused an appeal to be taken in its name from the judgment of the Jefferson circuit court to the court of appeals, and to that appeal it made the City of Louisville and R. H. Thompson, the police judge, parties. In the court of appeals the cause was argued by the counsel for the city of Louisville. The court of appeals reversed the judgment of the Jefferson county circuit court, and in its opinion held that the ordinance of the city of Louisville was void, for the reason that the Louisville Banking Company had an irrevocable contract with the Commonwealth upon its due acceptance of the terms of the Hewitt act, limiting the amount of taxes to which it was subject to those imposed by that act during its corporate existence.

For the reasons already stated in the case of the Bank of Kentucky against the same defendants, we think it conclusively established, as between the parties by a former adjudication, that the complainant had an irrevocable contract under the Hewitt act with the Commonwealth of Kentucky, by which no greater taxes than therein provided could be imposed upon it by the Commonwealth or under its authority.

For the reasons stated in the same opinion, we think the complainant entitled to equitable relief to prevent a violation of that contract by the taxes assessed under the revenue act of 1892. An order for a preliminary injunction, therefore, must issue in these cases, and the demurrers to the bills must be overruled.

55 And on 25th day of June, 1898, came parties by counsel and filed the following agreement herein:

In the United States Circuit Court for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
vs.
S. H. STONE, &c., Defendants. } # 6561. Stipulation.

It is stipulated and agreed between the complainant and the defendant City of Louisville that the following ordinances of the

said city shall be read as evidence in its behalf on the trial of this action, and the same are made part of the record as though copied and fully set out in this stipulation, to wit:

1. An ordinance entitled "An ordinance relating to assessments," approved August 9, 1893 (Second Biennial Compilation of the Ordinances of the City of Louisville, 1897, pp. 219–222).

2. An ordinance entitled "An ordinance concerning the taxes for the fiscal year ending August 31, 1894," approved December 21, 1893 (*ib.*, pp. 250–252).

3. An ordinance entitled "An ordinance concerning certain licenses in the city of Louisville," approved January 29, 1894, being the same ordinance referred to in complainant's bill requiring banks to pay to the sinking fund of the city of Louisville an annual license of four per cent. (4 %) on their gross earnings, a copy of which ordinance is hereto attached, marked Exhibit "L."

4. An ordinance entitled "An ordinance providing for the retrospective assessments of omitted personal property," approved July 9, 1895 (*ib.*, pp. 204, 205).

5. An ordinance providing for crediting ad valorem tax bills on personalty by the amount paid to the sinking fund as license on same," approved August 6, 1895 (*ib.*, pp. 205, 206).

56 6. An ordinance entitled "An ordinance concerning taxes for the fiscal year ending August 31, 1894, on all property omitted from an ordinance entitled 'An ordinance concerning the taxes for the fiscal year ending August 31, 1894,' approved December 21, 1893," approved April 9, 1897 (*ib.*, 252–256).

7. An ordinance entitled "An ordinance regulating the duties of the city assessor with respect to tax bills on assessments made by the State railroad commission and State board of valuation and assessment," approved April 9, 1897 (*ib.*, pp. 28, 29).

II. It is further stipulated and agreed between the complainant and the defendant City of Louisville that the complainant, Louisville Banking Company, did not pay any sum for license for the year 1894 under the said license ordi-ance approved January 29, 1894, but loaned to the commissioners of the sinking fund of the city of Louisville $5,938.78, for which said commissioners executed their note to complainant February 26, 1894, bearing interest at the rate of four per cent. (4 %) per annum, which note said commissioners paid in full to complainant February 21, 1896, with $475.12, accrued interest thereon, and said complainant paid to said commissioners of the sinking fund for license for 1895 under said ordinance the sum of $4,223.62, February 8, 1895.

III. It is further stipulated and agreed that the "commissioners of the sinking fund of the city of Louisville" were incorporated and organized and their powers and duties are prescribed and defined by the statutes and ordinances compiled and embraced in chapter XLIII, sections 1 to 49, inclusive, Burnett's Louisville City Code, 1884, pp. 691–705, which ordinances and special statutes are

57 made part of the record, as though copied and fully set out in this stipulation, and by sections 3010 to 3024, Kentucky Statutes, edition of 1894.

IV. It is further stipulated and agreed that during the time the complainant's action against R. H. Thompson, judge, mentioned in complainant's bill, was pending in the Jefferson circuit court and in the court of appeals of Kentucky on appeal, Hon. Henry S. Barker, who appeared as counsel for the defendant in said action, was the employed attorney of the commissioners of the sinking fund of the city of Louisville on an annual salary, as well as the city attorney of said city.

V. It is further stipulated and agreed that the meeting of the next General Assembly after the passage of the Hewitt act on May 17, 1886, was required by statute at the latter date to be, and was in fact, on Friday, December 30, 1887.

HELM & BRUCE,
Solicitors for Complainant, Louisville Banking Company.
HENRY L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

58 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
versus
S. H. STONE, &c., Defendants. } # 6561.

Petition and Assignment of Errors of the Board of Valuation and Assessment.

To the honorable the judges of the United States circuit court for the sixth circuit, district of Kentucky:

Now come the petitioners and defendants, Samuel H. Stone, auditor, George W. Long, treasurer, and Charles Finley, secretary of state, composing the board of valuation and assessment, and state that the record, proceedings, and decree of the court rendered herein June 25, 1898, contain manifest errors to their prejudice, committed as follows, to wit:

I.

The court erred in overruling and not sustaining each ground of their demurrer to complainant's bill and in entertaining jurisdiction of this action and in not decreeing a dismissal of complainant's bill, because it does not contain any matter of equity whereon this court can ground any decree or give to complainant any relief against these defendants.

II.

The court erred in decreeing that complainant has an irrevocable or irrepealable contract during its corporate existence with the State of Kentucky to pay taxes only in accordance with the Hewitt act of May 17, 1886, by reason of its acceptance of the provisions of said act and the former judgment in the action of complainant, Louisville Banking Company, against R. H. Thompson, judge of

the police court of Louisville, in the Jefferson circuit court,
59 common pleas division, April 13, 1897, in pursuance of the mandate of the court of appeals of Kentucky, by which judgment further proceedings were prohibited in the prosecution of the warrant issued against complainant in said police court for carrying on the business of banking without paying the license fee to the sinking fund commissioners of the city of Louisville, in violation of the ordinance of the city of Louisville of January 29, 1894, passed in pursuance of the act of July 1, 1893, for the government of cities of the first class, and in decreeing that the claims and rights of the defendant City of Louisville to ad valorem taxes on the assessments of complainant's franchise or intangible property, made or required to be made by these defendants, constituting the board of valuation and assessment of the State of Kentucky, under the act of November 11, 1892, were by the judgment aforesaid *res judicata*, and in decreeing a perpetual injunction against these defendants, as members of said State board, enjoining and restraining them from valuing and assessing the franchise or intangible property of complainant and from certifying such assessments for State and municipal taxation for the years 1895, 1896, 1897, and 1898 and during the corporate existence of the complainant, as required of these defendants, composing said State board, by said act of November 11, 1892, and in decreeing that the latter act and the State constitution or either of them impaired the obligation of said alleged contract between complainant and the State of Kentucky, and thereby violated and was repugnant to the Constitution of the United States.

Wherefore these petitioners and defendants say the said decree of the court herein is erroneous, and pray this honorable court to grant them an appeal to the Supreme Court of the United States, to the end that said decree may be reversed, and that said errors may be corrected; and so they will ever pray.

W. S. TAYLOR,
Attorney General, Solicitor for Defendants Stone, Long, and Finley, Composing the Board of Valuation and Assessment.

60 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
versus
S. H. STONE, &c., Defendants.

6561. Petition and Assignment of Errors of the City of Louisville.

To the honorable the judges of the United States circuit court for the sixth circuit, district of Kentucky:

Now comes the petitioner and defendant City of Louisville and states that the record, proceedings, and decree of the court rendered herein June 25, 1898, contain manifest errors to its prejudice, committed as follows, to wit:

I. The court erred in overruling and not sustaining each ground of its demurrer to complainant's bill and in entertaining jurisdiction of this action and in not decreeing a dismissal of complainant's bill because it does not contain any matter of equity whereon this court can ground any decree or give to complainant any relief against this defendant.

II. The court erred in decreeing that complainant has an irrevocable or irrepealable contract during its corporate existence with the State of Kentucky to pay taxes only in accordance with the Hewitt act of May 17, 1886, by reason of its acceptance of the provisions of said act and the former judgment in the action of complainant, Louisville Banking Company, against R. H. Thompson, judge of the police court of the city of Louisville, in the Jefferson circuit court, common pleas division, April 13, 1897, in pursuance of the mandate of the court of appeals of Kentucky, by which judgment further proceedings were prohibited
61 in the prosecution of the warrant issued against complainant in said police court for carrying on the business of banking without paying the license fee to the sinking fund commissioners of the city of Louisville, in violation of the ordinance of the city of Louisville of January 29, 1894, passed in pursuance of the act of July 1, 1893, for the government of cities of the first *calss*, and in decreeing that the claims and rights of the defendant City of Louisville to ad valorem taxes on the assessments of complainant's franchise or intangible property, made or required to be made by its codefendants, constituting the board of valuation and assessment of the State of Kentucky, under the act of November 11, 1892, were by the judgment aforesaid *res judicata*, and in decreeing a perpetual injunction against the defendant members of said State board, enjoining and restraining them from valuing and assessing the franchise or intangible property of complainant and from certifying such assessments for State and municipal taxation for the years 1895, 1896, 1897, and 1898 and during the corporate existence of the complainant, as required of said State board by said act of November 11, 1892, and in decreeing that the latter act or the State constitution or either of them impaired the obligation of said alleged contract between complainant and the State of Kentucky, and thereby violated and was repugnant to the Constitution of the United States.

Wherefore this petitioner and defendant says the said decree of the court herein is erroneous, and prays this honorable court to grant it an appeal to the Supreme Court of the United States, to the end that said decree may be reversed, and that said errors may
61½ be corrected; and so it will ever pray.

HENRY L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

62 Circuit Court of the United States, District of Kentucky.

LOUISVILLE BANKING COMPANY
vs.
SAMUEL H. STONE ET AL.

Know all men by these presents that we, Samuel H. Stone, Charles Finley, G. W. Long, & City of Louisville & Fidelity & Deposit Company of Maryland, are held and firmly bound unto the Louisville Banking Company in the sum of one thousand dollars, to be paid to the said Louisville Banking Company, executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 30th day of June, A. D. 1898.

Whereas the above-named Samuel H. Stone, Charles Finley, G. W. Long, & the City of Louisville hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named Samuel H. Stone, Charles Finley, G. W. Long, & the City of Louisville shall prosecute their appeal to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CITY OF LOUISVILLE, [L. S.]
By H. L. STONE, *City Attorney.* [L. S.]
FIDELITY & DEPOSIT CO. OF MARYLAND, [L. S.]
By WILLIS S. MULLEN, [SEAL.]
Gen'l Ag't & Att'y-in-fact.

Sealed and delivered in presence of—
HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court.

63 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

LOUISVILLE BANKING COMPANY, Complainant,
versus
S. H. STONE, &c., Defendants. } # 6561.

Agreement for Record on Appeal to Supreme Court.

In order to prevent unnecessary expense and the making of the record larger than is useful, the complainant and defendants have agreed as follows:

In copying the record in this case on appeal to the Supreme Court of the United States, the clerk may omit (1) the opinion and dissenting opinion in the bank tax cases, decided June 1, 1895,

beginning with the words "Opinion of the court by Chief Justice Pryor," page 31, and ending with the words "In this view I cannot concur," page 59, of printed record in this court (see said Opinions, 97 Ky., 590); (2) the clerk need not copy the special acts relating to the sinking fund commissioners of the city of Louisville nor the ordinances recited in the stipulation filed herein, but counsel may print such parts of said acts and ordinances as seem to them relevant in an appendix to their brief, and (3) the issue and service of citation on the appeal is hereby waived.

HELM & BRUCE,
Solicitors for Complainant.
HENRY L. STONE,
City Attorney, Solicitor for Defendant City of Louisville.

64 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 63 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, in accordance with the stipulation of counsel herein, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 4th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk.*

Endorsed on cover: Case No. 16,945. Kentucky C. C. U. S. Term No., 360. Samuel H. Stone, auditor; Charles Finley, secretary of state, and George W. Long, treasurer, of the Commonwealth of Kentucky, and City of Louisville, appellants, *vs.* The Louisville Banking Company. Filed August 15th, 1898.